

REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the amendments to the claims and the following remarks. Claims 1, 4-9 and 12 are pending. Claims 1, 4, 7, 9, and 12 are amended. Claims 2, 3, 10, 11, 13 and 14 are canceled. No new matter is involved. Basis for the amendments to claims 1, 4, 9, and 12 is found throughout Applicant's originally filed disclosure including the originally filed claims and, for example, on page 6 of the Application as originally filed, which states that the multimedia service can be effectively provided to the client on the network with the maximum number of sessions according to the operating situation of the server.

Reconsideration of claims 1, 4-9 and 12, as amended, is respectfully requested.

§103 REJECTIONS

Claims 1, 4-9 and 12 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Lumelsky, et. al. (USP 6,516,350, hereinafter "Lumelsky") in view of U.S. Patent 6,484,257 to Ellis. Applicant respectfully traverses this rejection.

Because the rejection is based on 35 U.S.C. §103, what is in issue in such a rejection is "the invention as a whole," not just a few features of the claimed invention. Under 35 U.S.C. §103, "[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The determination under section 103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. See In re O'Farrell, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988). In determining obviousness, the Examiner must explain what the differences between the claimed invention and the prior art are and provide objective factual evidence to support a conclusion that it would be obvious to one of ordinary skill in the art to achieve the claimed invention, which includes those missing features.

In the second place, in rejecting claims under 35 U.S.C. §103, it is incumbent on the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one of ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. *Uniroyal Inc. v. F-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 825 (1988); *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986); *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. *Note In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be suggested or taught by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1970). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

A showing of a suggestion, teaching, or motivation to combine the prior art references is an “essential evidentiary component of an obviousness holding.” *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not “evidence.” *See In re Dembiczak*, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

Claim 1, as amended, recites a method of maximizing the number of sessions according to an operating situation of a server that has an application program, a client-network manager, a central processing unit, a memory, an operating system and a network for stably providing a multimedia information service to a client in a network environment in which the server and a plurality of clients are connected with each other and the server dynamically decides whether to provide or not provide a multimedia service sessions according to a request of a client, comprising a service requesting step in which one of the plurality of clients requests a multimedia service from the server; a capability negotiation step comprising (1) evaluating resource use amount of a multimedia resource requested by one client; (2) evaluating an available amount of server resources including a CPU and a memory of the server; (3) evaluating an available amount of a bandwidth of a network connecting the server and the clients; and (4) evaluating an available amount of a CPU and a memory of the one client, in which it is evaluated whether the server is to generate a new session to provide the multimedia service according to the request by the one client; a service providing step in which the server provides the multimedia service to the one client through the capability negotiation; and a service session refusal step wherein the server refuses to generate a new session if the allocated resources are not receivable even in one of the capability negotiation steps (1)-(3); wherein the number of sessions according to the operating situation of a server for a multimedia service in a network environment is maximized.

Neither of the applied references, alone or in combination, discloses or suggests this claimed combination of features. In fact, neither applied reference even mentions maximizing the number of sessions according to the operating session of a server. As noted in Lumelsky's abstract, Lumelsky is directed to assigning clients across global and local resources, and coordinates placement of replicas of target content across global resources. While Lumelsky discloses negotiations, nowhere does Lumelsky disclose or suggest maximizing the number of sessions according to the operating situation of a server for a multimedia service, as recited. Nor does Ellis. In this regard, neither applied reference discloses or suggests the positively recited application program supporting an application processing procedure of a client, a client-network

manager, a central processing unit, a memory, an operating system and a network with a maximum number of sessions for stably providing a multimedia information service to a plurality of clients, as recited.

Furthermore, neither reference discloses a method or system in which, without the necessity of previously determining the number of the sessions, the server effectively provides a maximum number of multimedia service sessions based on the operating situation of the server and clients in the network environment. This concept is not found in either of the applied references. Lumelsky, for example, is concerned with a service control plane concept for architectures not in existence when Lumelsky was filed and creates a resource monitoring point with respect to the performance of multiple end resources and clients and their usage patterns so as to provide parameters on where, when and how to satisfy a request (paragraph bridging cols. 6 and 7 of Lumelsky). Lumelsky is not concerned with maximizing the number of multimedia service sessions – just satisfying a client's request regardless of whether the number of the server's service sessions with clients are maximized.

Nor does Ellis provide what is missing in Lumelsky. While Ellis can terminate an existing client session or refuse to accept a new client session if proper resources or configuration settings are not available (col. 7, line 10 to col. 8, line 27), Ellis also has no concept of maximizing the number of sessions at any given point in time. Instead, Ellis is directed to dealing with individual clients regardless of whether the number of client sessions is maximized.

In this regard, claim 1 positively recites a combination of features, including “(4) evaluating an available amount of a CPU and a memory of the one client in which it is evaluated whether the multimedia service can be effectively provided to the client on the network with a maximum number of acceptable sessions according to the operating situation of the server.” Applicant respectfully submits that this positively recited feature is simply not found in either Lumelsky or Ellis.

Similar comments apply to claim 4, which also positively recites this feature in a varying scope.

Similar comments apply to claim 9, which positively recites a method for a server for maximizing the number of sessions according to an operating situation of the server for a multimedia service in a network.

Similar comments apply to claim 12, which positively recites a server for maximizing the number of sessions according to an operating situation of the server for a multimedia service in a network.

The Office Action relies on col. 15, lines 32-37 and col. 16, lines 1-22 of Lumelsky. This broad expanse of Lumelsky is not detailed disclosure, but is a listing of Lumelsky's claims 1-5, and no claim of Lumelsky mentions or addresses Applicant's claimed feature of maximizing the number of sessions according to an operating situation of a server for a multimedia service in a network environment in which a server and a plurality of clients are connected with each other and the server provides multimedia service sessions according to a request of a client.

Moreover, Applicant's claimed invention is not disclosed or suggested by the broad summary in Lumelsky's col. 5, lines 46-48 of Lumelsky's service control plane guaranteeing a client's performance when the client accepts a mapping recommendation.

Furthermore, there is absolutely no mention in Lumelsky of evaluating whether the server is to generate a new session to provide a multimedia service from the server according to the request by the one client, as recited. In fact, the only mention of a "session" in Lumelsky is found in col. 14, lines 49-54, which states that a final aspect of his invention is directed to a Resource Management Framework (RMF) which is an extensible, distributed, policy-based, object-oriented management framework that supports per-flow media session setup and control between one or more media servers and end users and may augment the SCP. The RMF is disclosed in more detail in Serial No. 09/335,275, which is now U.S. Patent 6,529,950, which Lumelsky incorporates by reference. Applicant has reviewed U.S. Patent 6,529,950 and cannot find anywhere in the '950 patent a disclosure or suggestion of the server generating a new session to provide a multimedia service from the server according to the request by the one client, as recited. In fact, the '950 patent is directed primarily to negotiated mapping sessions instead of to the claimed invention.

The present rejection relies on Ellis for a teaching of the determination of a new session based on current available processor bandwidth, with reference to the Timing Model disclosure in cols. 7 and 8 of Ellis. The Office Action states that this teaching is obviously representative of a policy/property within Lumelsky and that the claims are found to be unpatentable over the combined teachings of Lumelsky and Ellis.

Applicant respectfully disagrees with this conclusion for a number of reasons.

Firstly, neither Lumelsky nor Ellis is directed to maximizing the number of sessions according to the operating situation of the server for a multimedia service in a network and, therefore, they do not render the claimed invention obvious even if one of ordinary skill in the art were properly motivated to combine them.

Secondly, the Office Action does not explain how Ellis is to be used to modify Lumelsky. Instead, it merely indicates that Ellis discloses a specific means by which processor resources and client requests are determinative of a new session generation. It is not clear how Lumelsky is to be modified or what aspect of Lumelsky is to be modified.

Thirdly, Ellis only discloses denying a connection based on configuration settings (col. 7, lines 36-39), not on whether the allocated resources are not receivable in one of the capability negotiation steps, or sufficient resources are not available, as recited.

Merely that the prior art can be modified in the manner suggested by the Examiner does not render the modification obvious unless the prior art suggests the desirability of the modification. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-4 (Fed. Cir. 1992). Lumelsky contains no such suggestion and the Office Action fails to provide objective factual evidence of record of any such suggestion. It is well settled that a factual inquiry to modify a reference must be based on objective evidence of record, not merely on conclusionary statements of the Examiner. See In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). As Lumelsky fails to even suggest maximizing the number of sessions according to the operating situation of a server for a multimedia service in a network environment in which the server and a plurality of clients are connected with each other, the motivation for modifying Lumelsky to include such a feature must be based on speculation and/or impermissible hindsight.

Turning to the Examiner's responses to Applicant's previously presented arguments, the Office Action states, on page 7, that Lumelsky's service control plane can be incorporated into any server. However, Applicant points out that the Office Action fails to provide objective factual evidence that one of ordinary skill in the art would be properly motivated to do so, and merely indicates that it could do this. This is not a proper basis for a rejection based on obviousness. Moreover, as pointed out above, even if the Office Action provided objective factual evidence of proper motivation to accomplish this proposed modification of Lumelsky (which it does not), this proposed modification would still not render the session maximizing claimed feature of the invention obvious.

Accordingly, the Office Action fails to make out a *prima facie* case of proper motivation to modify Lumelsky in view of Ellis to achieve the invention recited in independent claims 1, 4, 9 and 12, and the claims that depend from claim 4, including the rejected dependent claims 5-8, and thus, fails to make out a *prima facie* case of obviousness of the claimed invention.

Accordingly, reconsideration and withdrawal of this rejection of claims 1, 4 and 12 under 35 U.S.C. §103(a) as unpatentable over Lumelsky in view of Ellis are respectfully requested.

CONCLUSION

All rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Should there be any outstanding matters that need to be resolved, the Examiner is respectfully requested to contact Robert J. Webster, Registration No. 46,472, to conduct an interview in an effort to expedite prosecution in connection with the present application.

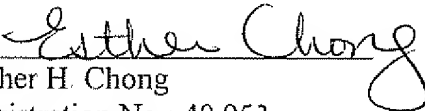
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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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